IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4933 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVARLAL MOHANLAL SHAH
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 4933 of 1989
MR SV PARMAR for Petitioner No. 1
MR. PREMAL JOSHI, AGP, for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 17/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Natverlal Mohanlal Shah-petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 31.3.1989 passed by the

Deputy Secretary, Information, Broadcasting and Tourism Department under Section 13 of the Gujarat Entertainment Tax Act, 1977 (hereinafter referred to as "the Act"). The Revisional Authority by his impugned order has quashed and set aside the order dated 29.12.1987 passed by the Mamlatdar, Entertainment Tax and specified Officer, Songadh under Section 9 of the Act. The Mamlatdar by his aforesaid order has assessed the entertainment tax at Rs. 2,466.25 ps. under Section 9(1) of the Act and imposed a penalty of Rs. 2,000/-, ordering the total sum of Rs. 4,466.25 ps. to be recovered.

2. The facts giving rise to this petition are as under:

2.1 The petitioner is carrying on business/ profession of exhibiting films at his cinema theatre at Songadh near Surat which is in a tribal area. When the petitioner was running this cinema theatre on 26.5.1984, the Commissioner, Entertainment, Gandhinagar, inspected the said theatre. At the time of inspection, he had inspected the books of account, counterfoils relating to the payments for admission to the theatre received by the petitioner. He had also physically verified the number of persons who, at that time, were admitted in the theatre with the tickets issued to them, the tickets collected by the door-keeper and the counterfoils maintained by the petitioner. During the visit he had found that the proprietor had entered the number of tickets in the Register (Form No. 1) and the ticket numbers shown against the same were sold out. He had found as follows:

Class	No. of persons	Entrance fee	Sr. No. of ticket
Balcony	57	3.00	Dh. 8772 to 8828
Upper Stall	51	2.50	Z. 7856 to 7906
Lower Stall	23	2.00	Kh. 3484 to 3506

2.2 During the course of inspection and on verification of the record of the cinema theatre, it transpired that the proprietor of the cinema theatre had committed serious irregularities by issuing bogus tickets and thereby tried to evade payment of entertainment tax.

2.3 The Commissioner, Entertainment Tax, Gujarat State, Gandhinagar, by his communication dated 29.6.1984 addressed to the Mamlatdar & Prescribed Officer in connection with the said visit, stated that in view of

the irregularities and for the reasons which are stated in the communication dated 29.6.1984, the specified Officer should assess the petitioner an amount of Rs. 84,862.50 ps. as entertainment tax as per Register No. 1 in accordance with the provision of Section 9(1) of the Entertainment Tax Act and also impose one and a half time more amount (i.e. Rs. 1,27,293.75 ps.), by way of imposing penalty. Thus, in all Rs. 2,12,156.25 ps. may be assessed tax by issuing show cause notice as to why appropriate steps should not be taken against the petitioner for misappropriation, and, cheating the Government and not maintaining true and correct accounts, committing serious breach of Sections 7 and 21 of the Act.

2.4 It has been stated in the petition that pursuant to the directions, the Prescribed Officer and Mamlatdar issued the notice under Section 9 of the Act read with Section 15(2) of the Gujarat Entertainment Tax Rules, 1979 (hereinafter referred to as "the Rules") on 31.7.1984. The petitioner appeared before the Prescribed Officer and Mamlatdar. It is the case of the petitioner that the Prescribed Officer and Mamlatdar by his order dated 15.1.1985, without considering the representation of the petitioner and only at the dictate of the Commissioner of Entertainment Tax, assessed the amount of tax as per Section 9(1) of the Act at Rs. 84,862.50 ps. and one and a half time thereof as penalty amounting to Rs. 1,27,293.75 ps. in all an amount of Rs. 2,12,156.25 ps.

2.5 Being aggrieved and dissatisfied with the aforesaid order the petitioner preferred appeal under Section 12 of the Act to the Collector, Entertainment Tax, Surat. The Collector, Surat, by his order dated 4.6.1985, allowed the appeal and remanded the case to the Mamlatdar with a direction for a de novo hearing.

2.6 Pursuant to the aforesaid directions of the Collector, the Prescribed Officer and Mamlatdar once again issued notice under Section 9 of the Act read with Rule 15(2) of the Rules. The petitioner appeared before the Prescribed Officer and Mamlatdar and made his submissions. The Mamlatdar by his order dated 10.3.1986 at Annexure-C to the petition made assessment at the same amount, namely, Rs. 84,862.50 ps. under Section 9(1) of the Act and penalty of Rs. 1,27,293.75 ps. under Section 9(3) of the Act.

2.7 Being aggrieved and dissatisfied with the said order, the petitioner preferred appeal before the

Collector, Entertainment Tax, Surat under Section 12 of the Act. The Collector, Entertainment Tax, Surat, again remanded the matter to the Prescribed Officer and Mamlatdar.

2.8 Pursuant to the direction of the Collector, Entertainment Tax, Surat, the Prescribed Officer and Mamlatdar again issued a notice on 31.8.1987 to the petitioner. The petitioner appeared and made his submission in writing before the Specified Officer and Mamlatdar, Surat.

2.9 The Specified Officer and Mamlatdar, pursuant to the order of remand, by his order dated 29.12.1987 considered the case of the petitioner and ultimately made an assessment of entertainment tax of Rs. 2,466.25 ps. and imposed Rs. 2,000/- as penalty, and a total amount of Rs. 4,466.25 ps. ws ordered to be recovered from the petitioner.

2.10 The Revisional Authority decided to exercise suo motu the power under Section 13 of the Act. Before exercising the said power, the Revisional Authority issued notice to the petitioner dated 20.8.1988 stating therein as to why the order passed by the Mamlatdar dated 29.12.1987 should not be revised. The petitioner filed reply against the said notice on 25.10.1988 through his advocate.

2.11 The Revisional Authority, after considering the entire case of the petitioner right from the beginning i.e. from the date of inspection on 26.5.1984 till the order passed by the Mamlatdar dated 29.12.1987 and perusing the relevant papers, particularly the notice issued by the Revisional Authority and the representation made by the petitioner, ultimately, by its order dated 31.3.1989 quashed and set aside the order dated 29.12.1987 passed by the Mamlatdar, Entertainment Tax and Specified Officer, Songadh and remanded the case to the Mamlatdar, Entertainment Tax and Specified Officer, Songadh, for reassessment after examining the evidence afresh.

3. Being aggrieved and dissatisfied with the afroesaid order of the Revisional Authority, the petitioner has filed this petition under Article 226 of the Constitution of India challenging the order of remand, before this Court. However, before we consider the submission of the learned counsel for the petitioner, during the course of the hearing, the learned A.G.P. Mr. Joshi appearing for the respondents, on instructions

received by him, makes a statement that after the remand order was made, the Prescribed Officer has already made an order on 30.3.1991 and thereafter the petitioner had filed an appeal in which also the Collector, Entertainment Tax, Surat, passed order on 19.12.1991. He places on record the order made by the Prescribed Officer after the remand and the order made by the appellate authority in this matter. In view of this further development, the petition has become infructuous and is rejected as having become infructuous. Rule is discharged with no order as to costs.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)

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